

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

v.

DAVID ALCORN and
AGHEE WILLIAMS SMITH II,

Defendants.

CRIMINAL ACTION NO.
2:19cr47

**** Jury Trial - Day 6 ****

EXCERPT TRANSCRIPT OF PROCEEDINGS
(**Cross-Examination of S. Newell**)

Norfolk, Virginia

February 8, 2022

BEFORE: THE HONORABLE RAYMOND A. JACKSON
United States District Judge, and a jury

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE

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I N D E X

<u>GOVERNMENT'S WITNESSES</u>	<u>PAGE</u>
SUSAN NEWELL Cross-Examination By Mr. Grindrod	3

E X H I B I T S

<u>DEFENDANT SMITH'S NO.</u>	<u>PAGE</u>
3	5

—S. Newell - Cross (By Mr. Grindrod)—

* * * * *

SUSAN NEWELL, called by the Government, having been first duly sworn, was examined and testified as follows:

* * * * *

CROSS-EXAMINATION

BY MR. GRINDROD:

Q. Good morning, ma'am.

A. Good morning.

Q. So, ma'am, you mentioned you learned pretty early on that David Alcorn and Kent Maerki had formed this company called "Janus," right?

A. In 2011 we learned that, yes, sir.

Q. Okay. And especially in those early days, almost all of the information you got about Janus and spectrum came from either Alcorn or Maerki or some combination of those two people, right?

A. Yes, sir.

Q. And you talked about all those conversations and all the information that was shared with you on direct. We're not going to go back through all of that. But basically you found that information that you were getting to be credible, right?

A. Yes, sir.

Q. And you didn't just take their word for it, right; you did some of your own research?

—S. Newell - Cross (By Mr. Grindrod)—

1 A. We did a little bit of research before we met them.

2 Q. Right.

3 MR. GRINDROD: So let's pull up Government's
4 Exhibit 700A, please. And this has already been admitted.

5 BY MR. GRINDROD:

6 Q. So, ma'am, do you remember this chart?

7 A. I sure do.

8 Q. And on direct, you said, I think, that all of this
9 information down here was not on the original chart that you
10 got from Alcorn and Maerki, right?

11 A. That's correct, sir.

12 Q. So when they gave you information, you asked questions or
13 asked for more information to clarify, right?

14 A. Yes, sir.

15 MR. GRINDROD: And we can take that down,
16 Ms. McCaslin.

17 BY MR. GRINDROD:

18 Q. I'm showing you on the screen here -- this has already
19 been admitted. This is Alcorn 21.

20 Do you remember this, that you talked about with
21 Mr. Yarow?

22 A. Yes, sir.

23 Q. And one of the documents that was attached here was FAQ,
24 right?

25 A. Yes.

—S. Newell - Cross (By Mr. Grindrod)—

1 Q. Frequently asked questions about Janus?

2 A. Right.

3 MR. GRINDROD: Let's take a look at Smith Exhibit 3,
4 just for the witness, please. This has not been admitted.

5 BY MR. GRINDROD:

6 Q. Is this those FAQs about Janus, ma'am?

7 A. Yes, sir.

8 Q. Do you recognize that document?

9 A. I do.

10 MR. GRINDROD: Your Honor, I would offer Smith 3.

11 THE COURT: Any objection?

12 MS. O'BOYLE: No objection, Your Honor.

13 THE COURT: It will be admitted.

14 (Defendant Smith's Exhibit 3 was admitted.)

15 BY MR. GRINDROD:

16 Q. So this is the frequently asked questions, and you got
17 that pretty early on, right?

18 A. Yes, sir.

19 MR. GRINDROD: And let's take a look --

20 Ms. McCaslin, could we go to Page 11 -- or sorry, the last
21 page, paragraph 11.

22 BY MR. GRINDROD:

23 Q. And, ma'am, can you read that part I just highlighted
24 there?

25 A. Yes.

—S. Newell - Cross (By Mr. Grindrod)—

1 "Verizon and AT&T will be very interested in
2 obtaining access to additional 800-megahertz band spectrum
3 for their respective cellular networks covering a large part
4 of the U.S."

5 Q. So that's what -- that kind of thing about the major cell
6 carriers being interested in the spectrum was, not just what
7 they told you, but what they gave you documents about?

8 A. That's correct.

9 Q. I'm sorry, I should use an antecedent. When I say
10 "they," I mean Alcorn and Maerki. Right?

11 A. Alcorn and Maerki, yes, sir.

12 Q. And there were -- this frequently-asked-questions packet
13 that they gave you also gave information on other resources
14 you could look to, right?

15 A. Yes, sir.

16 Q. It says you could go to the FCC website and look at
17 certain public documents, right?

18 A. Yes.

19 Q. And it refers you to some of those documents?

20 A. Yes.

21 Q. It carries over on to the next page, right?

22 A. Yes, sir.

23 Q. And so those were the kind of things that you looked at
24 when you were doing your own research, right?

25 A. We did, sir, yes.

—S. Newell - Cross (By Mr. Grindrod)—

1 Q. And from what you were seeing, the stuff that Alcorn and
2 Maerki told you still made sense, right?

3 A. It did, indeed.

4 Q. Okay. And this was -- I think you mentioned this with
5 Mr. Yarow. You didn't have a background in the EG/BG or
6 whatever, this particular kind of spectrum, right?

7 A. It was all a learning experience for us, yes, sir.

8 Q. But you had a pretty extensive background in business?

9 A. Yes.

10 Q. And the same with your husband? He's the Stanford MBA?

11 A. Yes, that's correct.

12 Q. And then you had worked in telecom in some capacity for a
13 long time, right?

14 A. 15 years.

15 Q. And so after all of that, the talking with Alcorn and
16 Maerki, the documents you looked at, this still seemed to you
17 like, hey, this makes sense, right?

18 A. Yes.

19 MR. GRINDROD: Okay. We can take that down,
20 Ms. McCaslin.

21 BY MR. GRINDROD:

22 Q. And then when it came to the business side of things, you
23 sort of dug into the details there, too, right?

24 A. I'm detail-oriented, yes.

25 Q. I wish I were more detail-oriented.

—S. Newell - Cross (By Mr. Grindrod)—

1 So you went back and forth with Mr. Alcorn about
2 what the specific contract provisions were going to say,
3 right?

4 A. Yes, sir.

5 Q. Let's just real quick look at Government's Exhibit 712.

6 MR. GRINDROD: This has been admitted, I believe.

7 MS. O'BOYLE: Yes, it has been admitted.

8 BY MR. GRINDROD:

9 Q. And so this is an e-mail from you, right?

10 A. Yes, sir.

11 Q. And you're talking to some of the other folks in your
12 investment group?

13 A. Yes, sir.

14 Q. And you're relaying to them information that you learned
15 in a conversation with David Alcorn, right?

16 A. Yes, sir.

17 Q. And you are talking about amendments to the agreements
18 and going back and forth over that, right?

19 A. That's correct.

20 MR. GRINDROD: We can take that down, Ms. McCaslin.

21 BY MR. GRINDROD:

22 Q. So through all of these interactions -- the documents,
23 the e-mails, the conversations -- you were confident enough
24 to want to invest, yourself, right?

25 A. Yes, sir.

—S. Newell - Cross (By Mr. Grindrod)—

1 Q. But you were also confident enough that you brought in
2 people that you really cared about to invest also, right?

3 A. The initial investment, they wanted one investor for
4 350,000, and my husband and I did not want to invest that
5 much, and so we asked would it be agreeable if we talked
6 about this with our friends and family and colleagues. And
7 that was agreeable, and so we did.

8 Q. Right. But you never would have done that if you thought
9 this was a bad idea, right?

10 A. That's correct. Absolutely.

11 Q. And the people you brought in, I mean, some of them were,
12 I guess, other people who were Jackson Hewitt franchisees?

13 A. Yes. I would say about half of them were other Jackson
14 Hewitt franchisees, and the others were family and long-time
15 friends.

16 Q. Folks like your sister, right?

17 A. My sister.

18 Q. And two brothers-in-law?

19 A. Yes, sir.

20 Q. And when you were talking to these people in your
21 investment group, you were telling them about what Alcorn and
22 Maerki told you, right?

23 A. That is correct, sir.

24 Q. Did you show them some of those materials that you got
25 from Alcorn and Maerki?

—S. Newell - Cross (By Mr. Grindrod)—

1 A. Yes, sir.

2 Q. And you told these people that you thought this was a
3 good idea, this is going to be a good investment, right?

4 A. We went out to meet with them face to face with one of
5 our partners so we could come back and feel more confident
6 telling these people that we all cared about that it was a
7 good investment.

8 Q. Right. When you told these people that you thought this
9 was a good investment, told them your understanding of how it
10 worked, obviously you weren't intentionally lying to these
11 people, right?

12 A. Never.

13 Q. You told them that because you believed it?

14 A. Absolutely, sir.

15 Q. Let's take a look at Government's Exhibit 707, which also
16 has been admitted.

17 So do you remember talking about this e-mail with
18 the prosecutor?

19 A. Yes, sir.

20 Q. Okay. And this is from -- sorry, I just took it down.
21 This is from July 2013?

22 A. Yes, sir.

23 Q. It's an e-mail from Mr. Alcorn to you and your husband,
24 right?

25 A. That is correct.

—S. Newell - Cross (By Mr. Grindrod)—

1 Q. And Mr. Alcorn tells you that Janus received SEC
2 subpoenas, right?

3 A. Yes, sir.

4 Q. But he's basically telling you in this e-mail it's no big
5 deal, right?

6 A. That's correct.

7 Q. He's saying the SEC has not made any claims -- let me
8 make sure I get the language right.

9 A. First sentence of the second paragraph.

10 Q. Thank you, ma'am. I should invite you up here to do
11 this.

12 THE COURT: Ms. Newell, do not do that in the
13 future.

14 THE WITNESS: Yes, sir.

15 BY MR. GRINDROD:

16 Q. What does he say in that first sentence of the second
17 paragraph?

18 A. "It is important to know that the SEC has not made any
19 claims or allegations against us."

20 Q. What else does he tell you in that paragraph?

21 A. "Business will remain uninterrupted."

22 Q. And that explanation, that satisfied you, right?

23 A. At that time, yes, sir.

24 Q. Okay. And Mr. Alcorn also tells you kind of why he's not
25 able to discuss it with you in more detail, right?

—S. Newell - Cross (By Mr. Grindrod)—

1 A. Yes.

2 Q. Basically, he's not supposed to -- his lawyers said not
3 to talk more about it, right?

4 A. Right.

5 Q. And after this e-mail, you and -- you put more money into
6 Janus investments, right?

7 A. Yes. Every time we invested, something good had
8 happened.

9 Q. Right. But I guess here what -- you invested not because
10 David Alcorn hid the SEC investigation from you entirely,
11 right?

12 A. That's right, sir.

13 Q. You were able to still have confidence because he
14 convinced you that the SEC investigation was just no big
15 deal?

16 A. That is correct, sir.

17 Q. And then we talked about the Napa conference on direct
18 examination, right?

19 A. At Silverado, yes, sir.

20 Q. And that was in August of 2013; is that right?

21 A. That is correct.

22 Q. So even after that conference -- now jump ahead to
23 September of 2013 with me.

24 A. Okay.

25 Q. After that conference, you and your group still believed

—S. Newell - Cross (By Mr. Grindrod)—

1 that Janus was going to be able -- was going to be the group
2 monetizing the licenses, right?

3 A. Yes, sir.

4 Q. Your understanding was that it was not up to you to go
5 out and do the groundwork --

6 A. Absolutely --

7 Q. -- Janus was going to do it?

8 A. I'm sorry. Yes, sir.

9 Q. And then we jump ahead to February of 2014, right?

10 MR. GRINDROD: Let's look at Government's
11 Exhibit 712. This has already been admitted.

12 BY MR. GRINDROD:

13 Q. This is another one of these e-mails of you updating your
14 group based on a conversation that you had with Alcorn,
15 right?

16 A. Yes, sir.

17 Q. And the conversation that you had with Alcorn was
18 basically that whatever the document said, Janus fully
19 intends to continue to be involved in the process, right?

20 A. That's correct.

21 Q. And the process was the process of monetizing the
22 spectrum?

23 A. That is right.

24 Q. So when you told Linda and Charlie and George that, you
25 told them that because you believed it was true, right?

—S. Newell - Cross (By Mr. Grindrod)—

1 A. Yes, sir.

2 Q. Based on what Mr. Alcorn told you?

3 A. That's right.

4 Q. Okay.

5 MR. GRINDROD: Let's look at Government's

6 Exhibit 713, which has also been admitted.

7 BY MR. GRINDROD:

8 Q. So, ma'am, these are your notes from that Janus workshop
9 in Washington, D.C., right?

10 A. That is correct.

11 Q. In 2014, June of 2014?

12 A. Right.

13 Q. And before this workshop, you knew that Janus had filed
14 for bankruptcy, right?

15 A. In March of that year.

16 Q. March of that year?

17 A. Yes, sir.

18 Q. And, again, that was something that David Alcorn didn't
19 hide from you, right?

20 A. Correct.

21 Q. But he explained it in a way that made it seem like it
22 was no big deal?

23 A. It had something to do with his other legal issues, yes.

24 Q. But it wasn't something --

25 A. It wasn't going to affect us.

—S. Newell - Cross (By Mr. Grindrod)—

1 Q. Yeah, it wasn't something you needed to worry about or
2 that was going to affect your ability to make money on the
3 spectrum investment?

4 A. He certainly said not to worry.

5 Q. And then at this meeting, the SEC inquiry comes up again,
6 doesn't it?

7 A. Yes, updating us.

8 Q. Right. And these are your notes of what Alcorn told you,
9 right?

10 A. Correct.

11 Q. So, again, the message coming from Alcorn and Maerki is
12 "no indication that we're accused of anything," right?

13 A. Right.

14 Q. Essentially, the SEC inquiry is no big deal?

15 A. Right.

16 Q. Okay. And, then -- now we're on Page 6. Again, your
17 notes, right?

18 A. Yes, sir.

19 Q. About what Alcorn said?

20 A. The "DA" to the left of it means that he said it.

21 Q. And he's telling you here again that it's still possible
22 to monetize these licenses by leasing them back to a major
23 carrier like Sprint, right?

24 A. That's correct.

25 Q. That's in June of 2014?

—S. Newell - Cross (By Mr. Grindrod)—

1 A. Right, sir.

2 Q. And so in July of 2013, you knew about the SEC
3 investigation, right?

4 A. Yes, sir.

5 Q. Knew about the bankruptcy, right?

6 A. Yes, sir.

7 Q. And you're being told you can still license these things
8 back to Sprint or some major carrier?

9 A. Yes, sir.

10 Q. So you put more money in in July of 2014, right?

11 A. Based on this information we were given in that meeting,
12 yes, sir.

13 Q. Right. And you never would have done that if you didn't
14 believe the information you were given, right?

15 A. Correct, sir.

16 Q. But we're talking about a serious amount of money that
17 you put at stake. It was like, all told, like, almost a
18 million dollars?

19 A. That's correct.

20 Q. So these aren't decisions that you're making lightly or
21 on a whim, right?

22 A. That is correct.

23 MR. GRINDROD: Let's look at Government 719, which
24 also has been admitted.

25 Ms. McCaslin, can you jump to Page 9 for me?

—S. Newell - Cross (By Mr. Grindrod)—

1 BY MR. GRINDROD:

2 Q. Let me scroll up so you can actually see who this e-mail
3 is from.

4 So this is an e-mail from George Cushman, right?

5 A. He's one of our investing members, yes, sir.

6 Q. In your little investment group?

7 A. Yes, sir.

8 Q. And this is from September of 2014?

9 A. Yes, sir.

10 Q. And Mr. Cushman's asking, still in September of 2014,
11 "Are the major players Sprint, AT&T, and Verizon a prospect
12 for our licenses now in the cities we have or later as we
13 have more cities or not at all?"

14 Right?

15 A. He was asking that, yes, sir.

16 Q. And so it's clear, at least some of these people in your
17 investment group, all the way through at least September
18 2014, still don't realize that these licenses can't be leased
19 back to a major carrier, right?

20 A. We're starting to suspect that's the case, yes, sir.

21 That's why we were asking.

22 Q. Right. But it's still like a question at that point --

23 A. Oh, yeah --

24 Q. -- nobody's come out and told you --

25 THE COURT: Wait a minute. Only one of you can talk

—S. Newell - Cross (By Mr. Grindrod)—

1 at a time, now.

2 THE WITNESS: I beg your pardon. I'm sorry, Your
3 Honor.

4 MR. GRINDROD: I'm sorry.

5 BY MR. GRINDROD:

6 Q. So it's still just a question at that point. No one has
7 come out and told you that, right?

8 A. Correct, sir.

9 Q. And so in this September 2014 time period, that's when
10 you had that meeting at Mr. Alcorn's house?

11 A. Yes, sir.

12 Q. And if Alcorn or any of the principals knew at that point
13 that these licenses couldn't be leased back to a major
14 carrier, they weren't telling you that, right?

15 A. We were not told that at that meeting. As of that point
16 in time, we were not told that that was not possible.

17 Q. If they knew then, they were covering that up from you?

18 A. Yes, sir.

19 MR. GRINDROD: We can take that down, Ms. McCaslin.

20 BY MR. GRINDROD:

21 Q. So, Ms. Newell, that meeting you had with Mr. Alcorn in
22 September 2014, I think you mentioned on direct examination
23 that you had a planned meeting the next day with Dale Gray?

24 A. Yes, sir.

25 Q. And you said that was to do due diligence?

—S. Newell - Cross (By Mr. Grindrod)—

1 A. Yes, sir.

2 Q. Due diligence on what?

3 A. Because our licenses hadn't been monetized to that point
4 in time and it didn't appear that Janus was actively working
5 on it, we felt compelled to try to save our investment by
6 looking for ways to monetize ourselves, and Dale Gray was the
7 only option that we were aware of at the time.

8 Q. And was Dale Gray involved in a company called RapidLink
9 Wireless?

10 A. I don't believe that he was a partner in RapidLink
11 Wireless, but he was part of the engineering portion of that
12 potentially.

13 Q. And was that -- was RapidLink Wireless the company you
14 were talking about due diligence, to looking into?

15 A. Yes, sir.

16 Q. Was RapidLink Wireless -- was the plan with RapidLink
17 Wireless to use push-to-talk communications with Motorola
18 technology?

19 MS. O'BOYLE: Objection. Hearsay and beyond the
20 scope of the direct.

21 THE COURT: Well, the question is does she know
22 this? So I will overrule the objection, only if she knows
23 what the plan was.

24 BY MR. GRINDROD:

25 Q. Do you know what the general plan was with RapidLink

—S. Newell - Cross (By Mr. Grindrod)—

1 Wireless?

2 A. Based on the meeting we had with Mr. Gray, that's
3 basically what we were told, yes, sir.

4 Q. What? What I had asked earlier?

5 A. That it was a push-to-talk option.

6 Q. Okay. And you ended up -- your investment group ended up
7 spending money basically pursuing that option, that
8 push-to-talk option, right?

9 A. Yes, sir.

10 Q. And so even though all this monetization through Janus
11 had not worked out, you hadn't given up on trying to figure
12 out a way to make money with these 800-megahertz spectrum
13 licenses, right?

14 A. We had invested almost \$1 million through Janus with
15 absolutely no evidence of any return on investment, and we
16 felt compelled to try to save -- salvage what we could of the
17 investment, and so we pursued this.

18 Q. And that was, again, before you -- before you would put a
19 bunch of money into RapidLink Wireless, you did some due
20 diligence, right?

21 A. Yes, sir.

22 Q. And, ultimately, you determined that it was worth putting
23 about \$500,000 into that?

24 A. It was the only option we had, yes, sir.

25 Q. I understand.

—S. Newell - Cross (By Mr. Grindrod)—

1 But that was ultimately what you decided to do,
2 right?

3 A. I'm not sure it was quite that much, but it was multiple
4 hundred thousand dollars.

5 Q. Now, obviously, ma'am, none of these investments worked
6 out for you or your friends, right?

7 A. Correct, sir.

8 Q. Not Janus?

9 A. Right.

10 Q. Not RapidLink Wireless?

11 A. Right.

12 Q. And I think you said on direct examination that you felt,
13 on some level, guilty about your involvement in this?

14 A. Yes, sir.

15 Q. And responsible?

16 A. Yes, sir.

17 Q. Because you -- and you felt that way, guilty and
18 responsible, because you had brought this opportunity to
19 other people and they lost money too, right?

20 A. That's correct, sir.

21 Q. And, ma'am, even if you feel that, of course, you did not
22 intentionally lie to anyone about these investments, right?

23 THE COURT: That question has been asked before,
24 Mr. Grindrod.

25 BY MR. GRINDROD:

____S. Newell - Cross (By Mr. Grindrod)_____

1 Q. Ma'am, you only ever told people what you believed to be
2 true, right?

3 A. That's correct, sir.

4 MR. GRINDROD: I have no further questions for this
5 witness, Your Honor.

6 * * * * *

7
8 CERTIFICATION

9
10 I certify that the foregoing is a correct excerpt
11 transcript from the record of proceedings in the
12 above-entitled matter.

13
14
15 _____/s/_____

16 Carol L. Naughton

17 February 15, 2022
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